

UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII
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HONOLULU, HAWAII 96850

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PRETRIAL PROCEDURES IN CIVIL CASES BEFORE MAGISTRATE JUDGES BARRY M. KURREN AND KEVIN S.C. CHANG *(Last Revised: 02/15/2011)*

The purpose of this memorandum is to provide general information regarding pretrial procedures before Magistrate Judges Kurren and Chang. This information supplements, and does not replace, counsel and the parties' review and knowledge of the Local Rules for the District of Hawai'i ("L.R."), Federal Rules of Evidence ("FRE"), and the Federal Rules of Civil Procedure ("Fed.R.Civ.P."). Counsel and any parties proceeding pro se are expected and required to be familiar with and comply with the aforementioned rules.

1. **Rule 16 Conferences:** Within 120 days after the filing of a matter, a scheduling conference is typically held. The parties must file with the court and serve on all parties a Scheduling Conference Statement. Counsel or parties proceeding pro se must be prepared to discuss, among other things, the following at the conference: (1) alternative dispute resolution procedures; (2) any discovery problems, anticipated or current; (3) pending or anticipated motions; and (4) prospects for settlement. Initial disclosures of witnesses and documents are required in most cases to be made prior to the conference. See Fed.R.Civ.P. 26.
 - a. **Scheduling Conference Statement:** This statement must be filed no later than (7) calendar days before the conference in accordance with L.R. 16.2 and contain, among other things, a brief statement of the case, statement of jurisdiction, whether jury trial has been demanded, list of discovery completed and a list of in progress, motions pending and hearing dates, and a list of any related cases.
 - b. **Report of Meeting of the Parties:** At least 21 days before the Scheduling Conference, the parties must meet to discuss the nature and basis of their claims and defenses and the possibilities for settlement or other resolution as required by Fed.R.Civ.P. 26(f). Counsel and parties appearing pro se must submit to the court within 14 days after the meeting a written report outlining the plan for discovery.
 - c. **Rule 16 Scheduling Conference Order:** An Order will be mailed to counsel and

parties proceeding pro se who appeared at the Scheduling Conference. This Order will set forth deadlines for (1) trial date; (2) final pretrial conference; (3) filing motions to join or add parties or amend pleadings; (4) filing other non-dispositive motions; (5) filing dispositive motions; (6) filing motions in limine; (7) expert disclosures; (8) discovery deadline; (9) settlement conference; (10) submitting settlement conference statements; (11) submitting voir dire questions, special verdict form, concise statement or case and jury instructions (if jury trial); (12) filing final witness list; (13) exchanging exhibit and demonstrative aids; (14) filing stipulations regarding proposed exhibits; (15) filing deposition designations and counter-designations; (16) filing trial briefs; (17) filing findings of fact and conclusions of law (if non-jury trial).

2. **Discovery Conferences:** No motion or discovery conference will be entertained unless and until counsel or parties proceeding pro se have met and conferred, in person or by telephone, concerning all disputed issues, in a good faith effort to limit the disputed issues and, if possible, to eliminate the need for any motion or conference. If a motion is filed, then the moving party must certify compliance with this requirement. See L.R. 37.1(b).
 - a. **Discovery Letter Briefs:** Discovery assistance on an expedited basis is available and is intended to afford a swift but full opportunity for parties to present their positions through abbreviated, simultaneous briefing and, when appropriate, a conference. *Counsel desiring court assistance in resolving discovery issues on an expedited basis shall contact opposing counsel in an effort to reach an agreement on a deadline for the submission of letter briefs, and then shall inform the courtroom deputy or chambers staff of the assigned magistrate judge of the agreed upon deadline.* See L.R. 37.1. After reviewing the letter briefs, the court will determine whether this expedited procedure will entail only the submission of letter briefs (consisting of five pages or less of written materials, **including exhibits**) submitted, or involve both the submission of letter briefs and a discovery conference or hearing.
 - b. **Confidentiality Order:** Where practicable, counsel or parties proceeding pro se should seek agreement for production of confidential documents pursuant to a stipulated confidentiality order. An acceptable form of a stipulated confidentiality order is attached. Generally, the court will not permit *entire* court files consisting of pleadings and documents to be sealed, even if the parties wish to stipulate to such measures. *The court, however, does recognize that it may be necessary sometimes to submit to the court a limited number of documents or specific portions of pleadings under seal. See, e.g., Form Stipulated Confidentiality Order.*
3. **Courtroom Managers:** For questions regarding scheduling in civil cases, the courtroom managers may be contacted by telephone. The courtroom managers for each of the

Magistrate Judges and their telephone numbers are:

Bernie Aurio, 541-1298
Courtroom Manager for Magistrate Judge Barry M. Kurren

Shari Afuso, 541-3091
Courtroom Manager for Magistrate Judge Kevin S.C. Chang

For additional telephone numbers and other information, you may consult the website for the United States District Court for the District of Hawai'i located at:
www.hid.uscourts.gov.

4. **Magistrate Judge Consent Trials:** In accordance with the provisions of 28 U.S.C § 636(c), Fed.R.Civ.P. 73, and L.R. 73.1 and 73.2, a magistrate judge is available to conduct all proceedings in a civil case including a jury or non-jury trial, deciding dispositive motions (such as a motion to dismiss or for summary judgment), entering a final judgment, and all post-judgment proceedings where all parties voluntarily consent. An appeal from a judgment entered by a magistrate judge shall be taken directly to the United States court of appeals in the same manner as an appeal from any other judgment of this district court. To obtain a consent trial, the parties must sign and file a consent form. The form may be obtained from the Clerk's office, a courtroom manager or the court's website.

The magistrate judges are responsible for handling criminal matters on a monthly rotational basis (i.e., for a total of four months in a calendar year). Consent trials will not be scheduled during a magistrate judge's criminal duty month.

5. **Settlement Conferences:** Settlement conferences are scheduled at the Rule 16 Scheduling Conference. If the parties agree, counsel or the parties may request an earlier settlement conference date by contacting the courtroom manager for the magistrate judge assigned to handle the settlement conference. Parties shall submit confidential settlement conference statements five (5) court days before the conference and follow the requirements as provided in L.R. 16.5.
6. **Status Conferences:** In accordance with L.R. 16.10, status conferences may from time to time be scheduled in any proceeding. Such conference may be requested by any party and shall be called only as necessary to facilitate the progress of the case and shall not be held as a matter of routine. No pleading need be filed.
7. **Final Pretrial Conferences:** The date for the final pretrial conference and all trial deadlines (such as deposition designations, submission of jury instructions or proposed findings of fact and conclusions of law, motions in limine filing deadline) are assigned at the Rule 16 Scheduling Conference. At the final pretrial conference, counsel or parties should be prepared to discuss, among other things, the following: (1) number of witnesses and scheduling; (2) status of settlement discussions; (3) special needs such as

interpreters or audiovisual equipment; and (4) exhibits and motions in limine.

8. **Forms:** The following forms are attached to the memorandum and counsel and parties are strongly advised to review and consider the forms when submitting pleadings or other documents relevant to the forms. These forms are not, however, a substitute for reviewing and complying with the Local Rules for the District of Hawai`i, the Federal Rules of Civil Procedure, and the Federal Rules of Evidence.
- a. Rule 16 Scheduling Order
 - b. Stipulated Protective Order.
 - c. Certification of Compliance (for discovery dispute)

For forms related to Bill of Costs, Witness and Exhibit Lists, Application to Proceed In Forma Pauperis, Waiver of Service of Summons, Summons in a Civil Action, Third Party Summons in a Civil Action, Subpoena in a Civil Case, and Civil Cover Sheet, please consult the Clerk of the Court's office or the website for the United States District Court for the District of Hawai`i at www.hid.uscourts.gov.

CERTIFICATE OF COMPLIANCE

I am counsel for the moving party in the above discovery motion and certify that counsel for the parties conferred [*STATE IF IN PERSON OR BY TELEPHONE*] on [*INSERT DATE*] concerning the disputed issue of [*DESCRIBE DISPUTE HERE*] in a good faith effort to limit the disputed issues and, if possible, eliminate the necessity for [*STATE IF MOTION, DISCOVERY CONFERENCE AND/OR DISCOVERY LETTER BRIEFS*] as required by L.R. 37.1(a).

STIPULATED PROTECTIVE ORDER

In order to protect the confidentiality of confidential information obtained by the parties in connection with this case, the parties hereby agree as follows:

1. Any party or non-party may designate as "confidential" (by stamping the relevant page or other otherwise set forth herein) any document or response to discovery which that party or non-party considers in good faith to contain information involving trade secrets, or confidential business or financial information, subject to protection under the Federal Rules of Civil Procedure or Hawai'i law ("Confidential Information"). Where a document or response consists of more than one page, the first page and each page on which confidential information appears shall be so designated.

2. A party or non-party may designate information disclosed during a deposition or in response to written discovery as "confidential" by so indicating in said response or on the record at the deposition and requesting the preparation of a separate transcript of such material. Additionally a party or non-party may designate in writing, within twenty (20) days after receipt of said responses or of the deposition transcript for which the designation is proposed, that

specific pages of the transcript and/or specific responses be treated as "confidential" information. Any other party may object to such proposal, in writing or on the record. Upon such objection, the parties shall follow the procedures described in paragraph 8 below. After any designation made according to the procedure set forth in this paragraph, the designated documents or information shall be treated according to the designation until the matter is resolved according to the procedures described in paragraph 8 below, and counsel for all parties shall be responsible for making all previously unmarked copies of the designated material in their possession or control with the specified designation.

3. All information produced or exchanged in the course of this case (other than information that is publicly available) shall be used by the party or parties to whom the information is produced solely for the purpose of this case.

4. Except with the prior written consent of other parties, or upon prior order of this Court obtained upon notice to opposing counsel, Confidential Information shall not be disclosed to any person other than:

(a) counsel for the respective parties to this litigation, including in-house counsel and co-counsel retained for this litigation;

(b) employees of such counsel;

(c) individual defendants, class representatives, any officer or employee of a party, to the extent deemed necessary by Counsel for the prosecution or defense of this litigation;

(d) consultants or expert witnesses retained for the prosecution or defense of this litigation, provided that each such person shall execute a copy of the Certification annexed to this Order as Exhibit "A" (which shall be retained by counsel to the party so disclosing the Confidential Information and made available for inspection by opposing counsel during the pendency or after the termination of the action only upon good cause shown and upon order of the Court) before being shown or given any Confidential Information and provided that if the party chooses a consultant or expert employed by [THE CORPORATE DEFENDANT] or one of its competitors (as listed on Appendix A), the party shall notify the opposing party, or designating non-party, before disclosing any Confidential Information to that individual and shall give the opposing party an opportunity to move for a protective order preventing or limiting such disclosure;

(e) any authors or recipients of the Confidential Information;

(f) the Court, Court personnel, and court reporters; and

(g) witnesses (other than persons described in paragraph 4(e)). A witness shall sign the Certification before being shown a confidential document. Confidential Information may be disclosed to a witness who will not sign the Certification only in a deposition at which the party who designated the Confidential Information is represented or has been given notice that Confidential Information shall be designated "Confidential" pursuant to paragraph 2 above. Witnesses shown Confidential Information shall not be allowed to retain copies.

5. Any persons receiving Confidential Information shall not reveal or discuss such information to or with any person who is not entitled to receive such information, except as set forth herein.

6. No party or non-party shall file or submit for filing as part of the court record any documents under seal without first obtaining leave of court. Notwithstanding any agreement among the parties, the party seeking to file a paper under seal bears the burden of overcoming the presumption in favor of public access to papers filed in court.

7. A party may designate as "Confidential" documents or discovery materials produced by a non-party by providing written notice to all parties of the relevant document numbers or other identification within thirty (30) days after receiving such documents or discovery materials. Any party or non-party may voluntarily disclose to others without restriction any information designated by that party or non-party as confidential, although a document may lose its confidential status if it is made public.

8. If a party contends that any material is not entitled to confidential treatment, such party may at any time give written notice to the party or non-party who designated the material. The party or non-party who designated the material shall have twenty-five (25) days from the receipt of such written notice to apply to the Court for an order designating the material as confidential. The party or non-party seeking the order has the burden of establishing that the document is entitled to protection.

9. Notwithstanding any challenge to the designation of material as Confidential Information, all documents shall be treated as such and shall be subject to the provisions hereof unless and until one of the following occurs:

(a) the party or non-party claims that the material is Confidential Information withdraws such designation

in writing; or

(b) the party or non-party who claims that the material is Confidential Information fails to apply to the Court for an order designating the material confidential within the time period specified above after receipt of a written challenge to such designation; or

(c) the Court rules the material is not confidential.

10. All provisions of this Order restricting the communication or use of Confidential Information shall continue to be binding after the conclusion of this action, unless otherwise agreed or ordered. Upon conclusion of the litigation, a party in the possession of Confidential Information, other than that which is contained in pleadings, correspondence, and deposition transcripts, shall either (a) return such documents no later than thirty (30) days after conclusion of this action to counsel for the party or non-party who provided such information, or (b) destroy such documents within the time period upon consent of the party who provided the information and certify in writing within thirty (30) days that the documents have been destroyed.

11. The terms of this Order do not preclude, limit, restrict, or otherwise apply to the use of documents at trial.

12. Nothing herein shall be deemed to waive any applicable privilege or work product protection, or to affect the ability of a party to seek relief for an inadvertent disclosure of material protected by privilege or work product protection.

13. Any witness or other person, firm or entity from which discovery is sought may be informed of and may obtain the protection of this Order by written advice to the parties' respective counsel or by oral advice at the time of any deposition or similar proceeding.

CERTIFICATION

I hereby certify my understanding that Confidential Information is being provided to me pursuant to the terms and restrictions of the Protective Order dated _____, in _____, Civil No. _____.

I have been given a copy of that Order and read it. I agree to be bound by the Order. I will not reveal the Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information -- including copies, notes, or other transcriptions made therefrom -- in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information -- including copies, notes or other transcriptions made therefrom - to the counsel who provided me with the Confidential Information. I hereby consent to the jurisdiction of the United States District Court for the purpose of enforcing the Protective Order.

DATED: _____.

EXHIBIT "A"